



**US Army Corps  
of Engineers  
St. Paul District**

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# **Devils Lake, North Dakota**

## **Institutional Analysis**

**February 2002**

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# INSTITUTIONAL ANALYSIS

## INTRODUCTION

A variety of institutions have jurisdictional authority over, or interest in, potential solutions to the flooding problems of Devils Lake. These institutions include statutory bodies, formal organizations, and semi-formal organizations. This institutional analysis documents positions, comments, and concerns of a variety of organizations that have provided input to the Devils Lake planning process or commented publicly about Devils Lake problems and potential solutions.

Three alternative plans are being considered in the Devils Lake Environmental Impact Statement (EIS):

- Pelican Lake Outlet – Constrained (300 cubic feet per second),
- Enhanced upper basin storage, and
- Expanded infrastructure measures.

The St. Paul District of the U.S. Army Corps of Engineers (Corps) has conducted numerous scoping meetings around the Devils Lake region to solicit the comments and concerns of institutions, organizations, and the general public. Numerous public and agency comments on the alternative plans have been received. The North Dakota State Water Commission has played an important role in sponsoring these meetings. The Spirit Lake Tribal Basin Alliance has conducted special meetings of groups concerned about the outlet alternatives, as well.

There are several important issues that complicate how individuals, agencies and non-governmental organizations view the Devils Lake flooding problem and the proposed alternatives. First, uncertainty about future climatic conditions leads to differences of opinion by agencies, organizations and individuals regarding the potential for further lake rise, perhaps ultimately resulting in an overflow down Tolna Coulee into the Sheyenne River. Second, some agency officials and members of the public believe that the creation of an outlet to the Sheyenne River during the current wet cycle will serve as a precursor to the creation an inlet to Devils Lake from the Missouri River to be used during future drought cycles. This possibility has been specifically excluded by the legislation requiring the EIS; however, suspicions remain strong.

Lastly, the institutional setting of the Devils Lake problem is further complicated international effects. An outlet or overflow from Devils Lake would discharge into the Sheyenne River, a tributary of the Red River of the North. The Red River flows northward across the Canadian border into Manitoba. Consequently, Federal and non-Federal institutions in both the United States and Canada are involved in the evaluation of Devils Lake problems and solutions. Canadian officials are also wary of a potential diversion of water from the Missouri River Basin to the Red River Basin in the future.

This institutional analysis was conducted using both primary and secondary sources of information. Secondary sources consisted principally of newspapers in the Devils Lake region

and correspondence submitted to the Corps in conjunction with EIS scoping meetings conducted in 1998, 1999 and 2001. Copies of this correspondence is contained in the Public and Agency Involvement Appendix to the EIS. Comments reviewed were restricted to the period between August 1996, when the Corps' Emergency Outlet Plan report was released, and October 2001, when this institutional analysis was completed.

The institutional analysis is organized into three sections, the first of which summarizes the range of potential impacts associated with the without project future conditions and the proposed alternatives. More complete discussions of the potential impacts are contained in other sections of the EIS. The second section provides a description of government organizations involved in the Devils Lake problem, including Federal, state, tribal, regional, and local governments. Intergovernmental and foreign government groups are also included in this section. The final section reviews the concerns of special interest and citizens' groups that have expressed their interest and concerns related to the technical, economic, and social impacts of various alternatives.

## **POTENTIAL IMPACTS**

Potential impacts associated with the Devils Lake alternatives can be divided into four major categories:

1. ***Physical Effects:*** including the level of Devils Lake and the water quality and water quantity (flooding) effects of an outlet or an overflow,
2. ***Environmental effects:*** including effects of an outlet or an overflow on aquatic habitat downstream along the Sheyenne River and Red River;
3. ***Social effects:*** including population relocation, public health and safety concerns, aesthetic values, recreation, and community cohesion,
4. ***Economic effects:*** including effects on the local economy and effects on the national economy. Alternatives could affect: transportation, agriculture, regional growth, business activity, property values, and fiscal health of local governments.

The physical and economic effects (national) have been documented in technical studies conducted to evaluate the feasibility of alternative plans to address flooding at Devils Lake. Environmental effects and social and local economic effects are described in detail in other sections of the EIS.

The geographic area of potential impact is broad and includes the Devils Lake Basin, the U.S and Canadian portions of the Red River Basin, and some interests within the Missouri River Basin. The impacts are focused in the following geographic areas:

1. Upper basin counties and communities in the Devils Lake Basin;
2. Counties and communities immediately surrounding Devils Lake;
3. The Spirit Lake Reservation and communities within the reservation;
4. Landowners in the rights-of-way of the proposed alternative;
5. Counties and communities along the Sheyenne River;
6. Counties and communities along the Red River of the North in the United States;
7. Communities along the Red River of the North in Canada, including Winnipeg; and,
8. The Province of Manitoba through Hudson Bay.

## **INSTITUTIONS AND ORGANIZATIONS**

The institutional setting for Devils Lake is complex. Due to the scale of the Devils Lake basin and the Red River basin, many different institutions and organizations in North Dakota, Minnesota, and Canada have or could have an interest in Devils Lake problems and solutions. The following sections catalogue positions, interests, and concerns expressed by institutions and organizations at the international, national, state, and local scales. Profiles of each organization are included

As will be discussed below, the national governments of the United States and Canada are involved because of the international implications of water transport across the border, which are covered in the of 1909 Treaty. Various Federal agencies are involved because of their statutory responsibilities. A number of Canadian national and provincial agencies are also concerned with the impacts of the outlet alternative. Agencies in both North Dakota and Minnesota are involved in the study process because there are potential implications for both states and state permits would be required for implementation of the alternatives. National environmental organizations and their state chapters are also involved because of long-standing concerns about the impacts of solutions to Devils Lake flooding problems on the environment.

## **INTERNATIONAL INSTITUTIONS**

### **The International Joint Commission**

The International Joint Commission (IJC) was formed by the United States and Canada in the Boundary Waters Treaty of 1909. The IJC is comprised of six members; the President of the United States appoints three, and the Governor in Council of Canada appoints three. Treaty provisions stipulate that use, obstruction, or diversions affecting the natural level of water on either side of the boundary after January 11, 1909 are to be allowed only if approved by the IJC. Waters on either side of the boundary are not to be polluted to the detriment of health or property on the other side of the boundary. The treaty provides an avenue for resolution of differences through the IJC.

The International Joint Commission has not to this point made any public statements or issued any correspondence concerning a project for Devils Lake. However, since a number of the alternatives would have hydrologic effects that extend across the U.S.-Canadian border, review and approval by the IJC will be required prior to project implementation.

### **International Red River Board**

The International Red River Board (IRRB) was formed as the result of a directive issued by the IJC on February 7, 2001. The IRRB combines the functions of the International Red River Pollution Board and the International Souris-Red Rivers Engineering Board. The board assists the IJC in preventing and resolving transboundary disputes regarding the waters and aquatic ecosystems of the Red River of the North and its tributaries and aquifers. Operating prior to the IJC Directive, the board submitted its First Annual Progress Report to the International Joint Commission in September 2000. The report identified projects that have a potential to affect the

water flowing across the boundary. The report stated that, *“This information exchange alerts the IJC of upcoming issues, and allows the responsible agencies opportunity to ensure that projects do not cause damage to the other.”* The report identified the Devils Lake outlet alternative as one of a number of potential issues being monitored by the board. It does not indicate any position on the other alternatives under consideration

## **NATIONAL INSTITUTIONS**

Federal agencies within the United States that have been involved in the planning process for Devils Lake include: the U.S. Army Corps of Engineers, the U.S. Department of Agriculture (Forest Service), the Federal Emergency Management Agency, the U.S. Geological Survey, the U.S. Fish and Wildlife Service, the U.S. Bureau of Reclamation, the Environmental Protection Agency, the U.S. Bureau of Indian Affairs, the Spirit Lake Tribe, the U.S. State Department, the U.S. Department of Agriculture’s Natural Resources Conservation Service, the Federal Highway Administration, and the National Weather Service. Participating agencies in Canada include Department of Foreign Affairs and International Trade and Environment Canada. Not all of these agencies have a statutory role in the review and implementation of a Corps plan for Devils Lake. Some agencies are involved only to provide expert technical advice on the formulation and implementation of alternatives. Additional information on the agencies which may have a statutory role and their potential statutory involvement is outlined below.

### **U.S. Army Corps of Engineers, St. Paul District and Omaha District**

The St. Paul District of the U.S. Army Corps of Engineers (Corps) has been directed by Congress to evaluate alternative plans for Devils Lake and prepare an EIS to evaluate the effects of alternative plans. In addition, the Omaha District administers the Corps’ regulatory program in North Dakota. The Omaha District would be responsible for processing the permits required for operation and maintenance of any resulting project by local authorities.

The legislative origins of the Corps’ regulatory program include the Rivers and Harbors Acts of 1890 (superseded) and 1899 (33 U.S.C. 401, et seq.). Various sections establish permit requirements to prevent unauthorized obstruction or alteration of any navigable waters of the United States. The most frequently exercised authority is contained in Section 10 (33 U.S.C. 403), which covers construction, excavation, or deposition of materials in, over, or under such waters, or any work, which would affect the course, location, condition, or capacity of those waters. The authority is granted to the Secretary of the Army. Other permit authorities in the Act are Section 9 for dams and dikes, Section 13 for refuse disposal and Section 14 for temporary occupation of work built by the United States. Various subsequent laws have modified these authorities but not removed them.

In 1972, amendments to the Federal Water Pollution Control Act added what is commonly called Section 404 Authority, (33 U.S.C. 1344) to the program. The Secretary of the Army is authorized to issue permits, after notice and opportunity for public hearings, for the discharge of dredged or fill material into waters of the United States at specified disposal sites. Selection of such sites must be in accordance with guidelines developed by the Environmental Protection Agency (EPA) in conjunction with the Secretary of the Army. These guidelines are known as

the 404(b)(1) Guidelines. The discharge of all other pollutants into waters of the U.S. is regulated under Section 402 of the Act, which supersedes the Section 13 permitting authority mentioned above. The Federal Water Pollution Control Act was further amended in 1977 and given the common name of "Clean Water Act" and was again amended in 1987 to modify criminal and civil penalty provisions and to add an administrative penalty provision.

The 1997 Emergency Supplemental Appropriations Act provided up to \$5,000,000 under the Flood Control and Coastal Emergency account to conduct pre-construction engineering and design (PED) and prepare an associated Environmental Impact Statement (EIS) for an emergency outlet at Devils Lake. A Notice of Intent to prepare an EIS for an outlet from Devils Lake to the Sheyenne River under Public Law 105-18 was published in the *Federal Register* on 21 October 1997. The Energy and Water Development Appropriations Acts of 1998, 1999 and 2000 included funds for construction of the Devils Lake project subject to a determination of economic justification, compliance with the National Environmental Policy Act (NEPA) of 1969, compliance with the Boundary Waters Treaty of 1909 and technical soundness. An amount of \$2,000,000 was provided from a supplemental appropriation in Fiscal Year 2000 and another \$4,000,000 was included in the Fiscal Year 2001 appropriations. These funds are for pre-construction engineering and design of an emergency outlet from Devils Lake, North Dakota to the Sheyenne River.. The Corps issues a revised Notice of Intent in December 2000. As the preparing agency the St. Paul District, USACE, is responsible for documenting the concerns of other institutions.

### **U.S. Department of Agriculture, U.S. Forest Service**

The purpose of the U.S. Forest Service is to manage public lands in national forests and grasslands for present and future generations. The agency's responsibilities include conducting research and providing technical assistance in forest and grassland management. Congress established the USDA Forest Service in 1905 to provide quality water and timber to benefit the United States. Since then, the responsibilities of the Forest Service have been expanded to include managing national forests for multiple uses and maintaining sustained yields of renewable resources including water, forage, wildlife, timber and recreation.

The U.S. Forest Service has not made any public statements or issued any correspondence concerning the project. A search of the agency's web site revealed only one mention of the outlet alternative. The Final EIS for the agency's Northern Great Plains Management Plan, dated May 2001, included an appendix evaluating the suitability of various regional rivers, including the Sheyenne, for designation as part of the Wild and Scenic River system. The discussion of the Sheyenne noted that the Corps was developing an outlet from Devils Lake into the Sheyenne River. The report noted that the increase in stream flow associated with the outlet "*. . . will likely increase degradation of the river's banks.*"

### **U.S. Fish and Wildlife Service**

The mission of the Fish and Wildlife Service (USFWS) is to "[work] with others to conserve, protect, and enhance fish and wildlife and their habitats for the continuing benefit of the American people."



The agency administers Federal permitting requirements, which are intended to limit the impacts of development on threatened and endangered species. Consultations between project planners and USFWS officials are often necessitated by implementation of the Clean Water Act, the National Environmental Policy Act and the Fish and Wildlife Coordination Act that require analysis of impacts of projects and programs. Agency activities include implementation of the Endangered Species Act (listing, reclassifying, and delisting species), implementation of the North American Waterfowl Management Plan, management of the National Wildlife Refuge System, conservation of migratory birds, fisheries and wildlife research, development and management of fish hatcheries, habitat conservation, administration of Federal aid, Pittman-Robertson and Dingell-Johnson Program funds, and wildlife law enforcement.

An April 9, 1998, USFWS letter submitted to the Corps in conjunction with scoping meetings for the Devils Lake project states "*the Service does not oppose a Devils Lake outlet*;" however, the letter goes on to say that the agency would like to see a much stronger emphasis placed on basin water management. The request for emphasis on basin water management is reiterated in an August 26, 1998, post-scoping meeting letter. In the spring of 1999, the USFWS provided Planning Aid Letters to the Corps addressing a variety of outlet alternatives (letters dated April 1, 1999, April 7, 1999, and May 24, 1999). Primary concerns expressed in those letters regarded the potential for changes in water quality associated with any outlet to impact aquatic mollusks, freshwater mussels and associated fish species in the Sheyenne River. Those concerns included potential impacts to Lake Ashtabula and the fish hatcheries in Valley City.

## **U.S. Bureau of Reclamation**

The Bureau of Reclamation's mission is "*to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public.*" Congress authorized the Pick-Sloan Missouri Basin Program (PSMBP) in the Flood Control Act of 1944. The primary purpose of the PSMBP was for flood control, navigation, irrigation, and hydro power, which would be facilitated by the construction of the main stem dams on the Missouri River. North Dakota was originally to receive its irrigation from water diverted from Fort Peck Dam in eastern Montana. Because of changes to the original plan, and the language in the 1964 appropriations act requiring specific reauthorization for all units of the PSMBP, USBR returned to Congress for reauthorization. On August 5, 1965, Congress addressed these concerns by enacting legislation for the Garrison Diversion Unit. The primary focus of the plan was to include in the initial stage municipal and industrial water, fish and wildlife development, recreation and flood control along with irrigation of 250,000 acres. The Garrison Diversion Unit Reformulation Act of 1986 was signed into law May 12, 1986, to authorize the recommendations of the Garrison Diversion Unit Commission's Final Report. From 1986 to 2000 various efforts were underway to formulate an implementable diversion plan. Routing the diversion to Sheyenne River remained the favored route. The Dakota Water Resources Act, December 2000, calls for \$200 million of Federal appropriations to provide reliable, high-quality water to areas in eastern North Dakota. The study, which began in 2000 with a Memorandum of Understanding signed among the North Dakota State Water Commission, the Garrison Diversion Conservancy District and the USBR, will look at possible alternatives to meet the Red River Valley's need for water. Although the Bureau of Reclamation has no specific regulatory or permitting authority it has a perceived connection through its

association with the Garrison Diversion Project. Institutions which might otherwise have no opinion regarding the potential for a Devils Lake outlet alternative are opposed to the Garrison Diversion. Because of this they may oppose an outlet alternative since it is seen as creating part of the infrastructure needed for the potential for implementation of the Garrison Diversion Project.

The Bureau of Reclamation has not made any public statements or issued any correspondence concerning the project.

## **U.S. Environmental Protection Agency**

The U.S. Environmental Protection Agency's (EPA) primary purpose is to protect the integrity and quality of the nation's waters and environment. The mission of the EPA is "*to protect human health and to safeguard the natural environment, air, water, and land upon which life depends.*" The Environmental Protection Agency has authority under the Clean Water Act to establish national criteria for water quality standards. State water quality standards are based upon the national criteria.

A December 5, 1997, letter submitted by EPA prior to the scoping meetings raised a number of issues. Nonstructural alternatives, particularly upper basin storage, received the greatest emphasis from EPA officials. A July 31, 1998, letter submitted by EPA after the scoping meetings stressed the need to examine upper basin management, questioned the effectiveness and emergency nature of the outlet, and emphasized the critical nature of boundary water issues. In an August 23, 2001, e-mail to the Corps, EPA expressed concern with water quality issues, questioned the feasibility of a 480 cubic feet per second (cfs) outlet, questioned the addition of avoiding an uncontrolled spill from Devils Lake as a project purpose, emphasized the need for coordination between the Corps' Devils Lake study and the Bureau of Reclamation's Red River of the North water supply study, asked for clarification of the future without project condition and identified downstream erosion as a critical issue.

## **U.S. Department of the Interior, Bureau of Indian Affairs**

The mission of the Bureau of Indian Affairs (BIA) is "*to enhance the quality of life, to promote economic opportunity, and to carry out the responsibility to protect and improve the trust assets of American Indians, Indian tribes, and Alaska natives.*" Under the authority of the Native American Graves Protection and Repatriation Act, the BIA has the authority to protect Indian burial grounds both above and below the earth's surface.

The Bureau of Indian Affairs has not made any public statements or issued any correspondence concerning the project.

## **Spirit Lake Sioux Nation**

The Spirit Lake Nation reservation was established by Treaty between the United States Government and the Sisseton Wahpeton Sioux Bands in 1867. The Spirit Lake Sioux Tribe (formerly the Devils Lake Sioux Tribe) has jurisdiction over 53,239 acres of land immediately

south of Devils Lake and has made claim to lake ownership. The northernmost 1 ½ to 2 miles of the Peterson Coulee outlet route lie within the Spirit Lake Reservation, but no Tribal trust lands would be impacted because affected reservation lands within the reservation boundary are all in private ownership. In addition to their status as a sovereign nation, the Spirit Lake Nation receives special consideration in the planning process as mandated by Executive Order 12898 “Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations” (February 11, 1994.)

The Spirit Lake Tribe is opposed to an outlet across its lands until the environmental impacts can be analyzed by the Tribe. Tribal officials are interested in securing their own technical advice regarding the environmental impacts. Sovereignty and cultural factors, including the spiritual nature of the lake and the important cultural plants in the littoral zone, are important issues for the Tribe and its Spirit Lake Basin Alliance and Environmental Justice Task Force (*Devils Lake Journal* articles dated March 19, 1998, February 4, 1998 and *Northscape News* article dated January 16, 1998). In an April 13, 1998, letter submitted in conjunction with the scoping meetings, the Spirit Lake Tribe took strong exception to meeting procedures, stressing the need for cultural sensitivity as expressed in environmental justice directives. Subsequent to the scoping meetings, the Spirit Lake Tribe submitted a large packet of information titled *Indigenous Voices* that stresses cultural, spiritual and sovereignty issues, the need for independent environmental and social impact studies of flooding and water projects that would be grounded in principles of environmental justice, and the need for economic restoration. An enclosed letter of support from the Mni Sose Intertribal Water Rights Coalition also stresses cultural and spiritual issues and the potential for flooding on the Sheyenne River.

In an August 30, 2001, letter commenting on the Preliminary Planning Report, tribal officials referenced their previously issued opinions against a West Bay outlet and provided a number of additional comments. Those comments included concerns regarding recreation impacts of the project, water quality impacts on Devils Lake associated with diversion of water from Pelican Lake, erosion impacts on the Sheyenne River related to both volume and duration of with-project flows, application of Section 404 permitting requirements to the Peterson Coulee route, and changes to the project purpose.

## **Environment Canada**

Environment Canada is a “science-based government department whose business is helping Canadians live and prosper in an environment that is properly protected and conserved.” Environment Canada works to promote and provide sustainable development throughout Canada. The agency is one of the key Canadian Federal agencies concerned with water quality in Canadian waters, and is therefore instrumental in maintaining the integrity of water sources. Environment Canada was established in 1971 by the Canada Water Act of 1970 and is overseen and managed by the Ministry of Environment. Environment Canada has the regulatory authority to maintain the quality and quantity of Canadian waters within the guidelines set forth by the Canada Water Act, the International River Improvements Act, the Canada Wildlife Act, and the Canadian Environmental Assessment Act. Also, the Ministry of Environment has the authority to oversee all activities that pertain to dams, canals, or any other activity that alters the flow of Canadian rivers under the International River Improvements Act. The Canada Wildlife Act

gives the Ministry of Environment the authority to protect all lands and water inhabited by wildlife, and to designate areas as wildlife areas.

Water quantity and quality, biota transfer, and inlet issues are raised in letters submitted by the Transboundary Waters Unit of Environment Canada on December 22, 1997, prior to the scoping meetings, and on August 27, 1998, after the scoping meetings. The 1997 letter notes, *"the technical issues identified are specific to the project and do not address the Government of Canada's broader policy concerns, which must be dealt with in other forums."* That these issues remained concerns was confirmed in an April 20, 2001, letter from the Transboundary Waters Unit of Environment Canada. The letter cited concerns that the potential spread of invasive species might be in contradiction of Executive Order 13122 on Invasive Species, dated February 3, 1999. The letter raises two additional concerns: 1) project operation could have water quality impacts in violation of the Boundary Waters Treaty of 1909; and, 2) failure to consider transboundary effects would violate the policy set forth in the July 1, 1997, Council on Environmental Quality (CEQ) *Memorandum to Heads of Agencies on the Application of the National Environmental Policy Act to Proposed Federal Actions in the United States with Transboundary Impacts*.

### **Department of Foreign Affairs and International Trade**

The primary role of the Department of Foreign Affairs and International Trade is to "manage Canada's day-to-day relations with the governments and peoples of other nations, both bilaterally and within the many international organizations in which Canada participates." The Department of Foreign Affairs primarily develops and implements policies that determine how Canada approaches its role in dealing with foreign nations and global issues. The Department of Foreign Affairs has the authority under the Boundary Waters Treaty of 1909 to define the jurisdiction under which the International Joint Commission carries out its mandate to make recommendations regarding use, obstruction, and diversion of boundary waters.

According to the April 2000 *Current Issues in Canada – U.S. Relations Fact Sheet* prepared by Canada's U.S. embassy, *"there are still unresolved disputes over the Garrison Diversion and Devils Lake."*

### **STATE INSTITUTIONS**

The States and Canadian provinces involved in the Devils Lake project analysis include North Dakota, Minnesota, and the Province of Manitoba, Canada. In North Dakota, the State Water Commission sets water resources policy. The Commission has been the most active state agency in the process. Other North Dakota agencies involved in the project development and review include the Department of Transportation, Game and Fish Department, Department of Health, Parks and Recreation Department, Department of Agriculture, North Dakota State Historical Society, North Dakota Forest Service and the Division of Emergency Management. Participating Minnesota agencies include: the Pollution Control Agency, the Board of Water and Soil Resources, the Department of Natural Resources, the Department of Health, and the Minnesota Historical Society. The primary Manitoba agency involved has been Manitoba Water Resources. The State of Missouri, through its Attorney General, Department of Conservation,

and Department of Natural Resources, has entered the process because of concerns about the potential relationship between the project and Garrison Diversion. There is also an interest in the project from the downstream Missouri River states because of Garrison Diversion. State agencies with a potential statutory interest are listed below.

### **North Dakota State Water Commission**

The mission of the North Dakota State Water Commission is to enhance the quality of life and strengthen the economy of North Dakota by managing the water resources of the State for the benefit of its people. The State Water Commission consists of the Governor (Chairman), the Commissioner of Agriculture (ex officio), and seven members appointed by the Governor to provide regional representation. The seven members serve six-year, overlapping terms. In order to accomplish the multidisciplinary tasks that the Water Commission is called on to achieve, the State Engineer, as Secretary of the State Water Commission, employs staff within five separate divisions.

The North Dakota State Water Commission (SWC), as the state's agency for water policy, has spearheaded the state's effort to construct an outlet. In an August 26, 1998, letter submitted after the scoping meetings, the SWC points out the need for a three-pronged approach consisting of upper basin storage, infrastructure improvement and construction of an outlet. They stress that an outlet is "*a vital component of the flood solution.*" Representatives of the SWC attended public scoping meetings in April 2001 and public information meetings in October 2001. The SWC representative reiterated the Commission's support for a Devils Lake outlet alternative while responding to questions raised by meeting attendees.

The North Dakota State Engineer is the Secretary of the State Water Commission and is the Chief Officer in charge of regulation, administration and allocation of North Dakota's water. The p authorities of the State Engineer include water rights allocation, drainage control, dike and dam safety and floodplain management. The State Engineer is responsible for issuing water right permits, drainage permits for projects of state or regional significance, permits involving dams and dikes and other water storage facilities such as waste-water holding ponds, and sovereign lands permits, and must review all technical documentation associated with proposed development in regulatory floodways. The State Engineer holds views consistent with those of the Commission regarding the Devils Lake project.

### **North Dakota Game and Fish Department**

The North Dakota Game and Fish Department's (NDGF) primary purpose is to manage the State's fish and wildlife resources. This agency is responsible for enforcing state wildlife laws, managing fishing water, fish and wildlife Federal aid coordination, issuing various licenses, providing technical and biological expertise involving governmental and industrial projects, and providing input into public lands resource protection. The agency is also responsible for endangered and threatened species and non-game wildlife, managing terrestrial wildlife species, working with landowners to provide wildlife habitat, and maintaining wildlife management areas.

In an August 17, 1998, letter submitted after the scoping meetings, the North Dakota Game and Fish Department expressed concerns about the potential for bank erosion along the Sheyenne River, the potential for future drainage in the upper basin and how that might affect wetland resources. The North Dakota State Game and Fish Department has not made any further public statements or issued any additional correspondence concerning the project.

### **North Dakota Department of Health's Environmental Health Section**

The North Dakota Department of Health's Environmental Health Section (EHS) operates under the direction of the State Health Officer. The primary goal of the EHS is to safeguard the quality of North Dakota's air, land, and water resources. Another important goal is to maintain control of Federal environmental programs in North Dakota and ensure programs and activities comply with state environmental statutes. The agency is responsible for issuing wastewater discharge permits, stormwater discharge permits, Section 401 water quality certification involving the Clean Water Act Section 404 permit process and protecting water quality standards in the state established under statutes and administrative rules. EHS is charged with permitting and monitoring public water supply systems and facilities. The Division of Municipal Facilities secures compliance with the drinking water standards established by the Safe Drinking Water Act. The agency administers the following water-related programs: the Ground and Surface Water Management Programs, the Pollution Discharge Elimination System Permit Program, the Non-point Source Pollution Management Program, the Wellhead Protection Program, the Underground Injection Control Program, and the Livestock Waste Management Program.

The North Dakota Department of Health's Environmental Health Section has expressed concerns with the Devils Lake project at scoping meetings throughout the study process. The agency has consistently expressed the viewpoint that any outlet plan must be in compliance with water quality standards of North Dakota, Minnesota and Manitoba. In addition, plans should be able to demonstrate that there is no negative impact on downstream aquatic habitat, independent of establishing compliance with water quality standards. Consistent with these concerns, the section considers the Pelican Lake Outlet alternative to have the least potential for negative impacts of any of the outlet alternatives. The agency was contacted on November 1, 2001 confirmed this position.

### **North Dakota State Parks and Recreation Department**

The North Dakota Parks and Recreation Department is the agency responsible for managing and maintaining the state park system. The Parks and Recreation Department consists of four divisions: Administrative, State Parks, Planning and Natural Resources, and Recreation. The agency maintains the Natural Heritage Inventory, an inventory of threatened, rare and unique animals and plants in the state. The agency tracks species management concerns beyond the listed species covered under the Federal Endangered Species Act, NDCC 55-11. The Parks Division manages the state's 16 state parks, and the Planning and Natural Resources Division administers programs associated with North Dakota's Natural Areas and Nature Preserve Act.

The North Dakota State Parks and Recreation Department has not made any public statements or issued any correspondence concerning the Devils Lake project.

## **North Dakota Department of Agriculture**

The North Dakota Department of Agriculture's primary purpose is to be an advocate for the interests of farmers, ranchers, and rural communities in the State. The North Dakota Department of Agriculture is also an active participant in the Waterbank Program. The Waterbank Program is aimed at saving the small potholes and marshes most often targeted for drainage. Leases associated with the Waterbank Program are acquired for ten-year periods. Priority is given to tracts of land that offer public access, have restorable wetlands, and a ratio of one acre of wetlands to three acres of adjacent uplands. Enabling legislation did not provide appropriation of state monies, but allowed the NDDA to solicit from public and private sources.

In a November 8, 2001 e-mail the Agriculture Commissioner of the North Dakota Department of Agriculture indicated that the agency's sole concern with the Devils Lake project was ensuring that all impacted landowners be treated fairly. A follow up e-mail on November 9, 2001, provided more detail defining the elements of "*fair treatment*." Those details included the need to ensure that: 1) spoil material is spread properly so that it won't affect crop or pasture production, 2) banking along the channel must be groomed and seeded, 3) any access roads destroyed should be replaced or bridged, 4) fair prices for easements must be paid to the landowners directly affected, 5) the channel should not hinder natural surface water flow, and 6) if possible, landowners adjacent to the channel should be allowed to drain excess surface water into it.

## **North Dakota State Historical Society**

The mission of the North Dakota State Historical Society is to identify, interpret, preserve, and promote the heritage of North Dakota and its people. The Society is under the supervision of the State Historical Board. Seven board members are appointed by the Governor; the remaining members are *ex officio*. The Archeology and Historic Preservation Division protects and manages cultural resources by identifying and recording sites related to North Dakota's prehistory; surveying, identifying and recording structures and sites eligible for listing on the North Dakota Historic Sites Registry; and nominating structures and sites for listing on the National Register of Historic Places. The State Historic Preservation Officer, also the Superintendent of the State Historical Society, is responsible for ensuring compliance with Section 106 of the National Historic Preservation Act. This involves review and comment on projects requiring Federal involvement to determine the impacts on significant historical, architectural, and archeological properties.

The North Dakota State Historical Society has not made any public statements or issued any correspondence concerning the Devils Lake project. In a May 1, 1998, letter to the Corps responding to the Draft Scoping Document, the Society declined to provide comments at that time. The letter indicated that they would review and comment upon the draft and final NEPA documents. The Corps did not receive any further correspondence from the agency in response to the Supplemental EIS Scoping Document, dated July 2001.

## **North Dakota Forest Service**

The mission of the North Dakota Forest Service is to care for, protect and improve forest resources of North Dakota for present and future generations. The agency is responsible for administering statewide forestry programs and manages 13,278 acres in five state forests. The Sheyenne River State Forest and the Telrault Woods are located within the project impact area. The agency provides technical assistance relating to the management of private forestlands, state forestlands, urban and community forested areas, tree plantings, wildlife, and fire protection throughout the state.

In an April 17, 2001, letter submitted after scoping meetings held April 2 through 5, 2001, the North Dakota Forest Service expressed concerns regarding impacts to riparian forests, aquatic, fishery and wildlife resources which could result from increased flows on the Sheyenne River and Red River, flooding adjacent to Devils Lake, long-term soil impacts, and changes in water quality.

## **Minnesota Pollution Control Agency**

The Minnesota Pollution Control Agency (MPCA) was established in 1967 by the Minnesota State Legislature. The agency's purpose is to protect and preserve Minnesota's land, air, and water resources. The MPCA develops and enforces environmental regulations, and carefully monitors the State's natural resources to maintain a desired level of environmental quality.

## **Minnesota Board of Water and Soil Resources**

The Minnesota Board of Water and Soil Resources (BWSR) is dedicated to helping local governments manage their natural resources, and improving local capability through providing technical, financial, and administrative assistance. The BWSR is a multi-agency organization which authorizes local units of government to develop and implement comprehensive wetland protection and management plans and local watershed management plans, establishes guidance and permit authority for local drainage projects, and establishes policies of the State to conserve soil and water resources through the implementation of practices that effectively reduce or prevent erosion, sedimentation, siltation, and agriculturally related pollution.

Minnesota's position regarding the Devils Lake project has been expressed through the Department of Natural Resources, Pollution Control Agency, Department of Health, and Board of Water and Soil Resources in meetings and in a joint March 23, 1998, letter submitted to the Corps in conjunction with the scoping meetings. Minnesota officials are concerned about possible increased risk of flooding downstream, biota and pathogen transfers, and water quality changes, particularly in relation to downstream water treatment plants. State agencies generally favor upper basin retention and structural and nonstructural measures. Minnesota officials do not consider the situation to be an emergency and do not think that the normal EIS process should be circumvented. State officials fears that an outlet may be a prelude to an inlet (March 23 letter; *Devils Lake Journal* article dated August 6, 1998; *Northscape News* article dated August 6, 1998). MPCA and BWSR have not provided additional comment.



## Minnesota Department of Natural Resources

The Minnesota Department of Natural Resources (DNR) is primarily responsible for managing the State's natural resources for sustainable use. The DNR enforces regulations related to hunting, trapping, commercial and sport fishing, rules pertaining to state parks and campgrounds, boating, all-terrain vehicles and off-road motorcycling, snowmobiling, and laws related to alteration of the State's lakes, rivers, and wetlands. The Minnesota DNR administers the distribution of permits for water appropriation and protected waters. Additional responsibilities held by the DNR include enforcement of floodplain and shore land regulations, Wild and Scenic Rivers, protection of flow levels, ordinary high water marks, surface water management, and aquatic nuisance control (biota).

An August 27, 1998, letter submitted by MDNR following the scoping meetings emphasizes water quality, erosion, sediment transport, and biota transfer issues. In addition to the position stated above, the MDNR expressed additional concerns in a letter dated April 20, 2001. Agency officials emphasized that biota transfer should be considered a key issue for all further analysis and expressed the view that macroinvertebrate studies planned for Devils Lake and the Sheyenne River should be expanded to include the Red River.

## Minnesota Department of Department of Health

The mission of the Minnesota Department of Health is to “*work with other organizations to protect and promote the health of the entire population by emphasizing the prevention of disease, injury, disability, and preventable death through assessment and the promotion of effective coordination and use of community resources, and by extending health services into the community.*” The Minnesota Department of Health has the authority to safeguard the quality of Minnesota drinking water within the guidelines of the Federal Safe Drinking Water Act.

An April 18, 2001, letter from the Minnesota Department of Health expressed the concern that the “*Downstream Surface Water Users Study*”, prepared for the Corps by BARR in March 1999, should be expanded to include the city of East Grand Forks. East Grand Forks was excluded from the study because the municipality did not withdraw water from the Red River at that time; however, city officials are studying such an intake and it appears to be a serious possibility in the future.

## Minnesota Historical Society

The mission of the Minnesota Historical Society is to foster an awareness of Minnesota history so that people may draw strength and perspective from the past and find purpose for the future. The State Historic Preservation Office oversees programs to identify, evaluate, register and protect Minnesota's important historic and archaeological resources. The Field Services and Grants sections provide technical and grant assistance to encourage historic preservation and to encourage the development of local history organizations and activities throughout the state.

The Minnesota State Historical Society has not made any public statements or issued any correspondence concerning the Devils Lake project. In an August 3, 1998, letter to the Corps responding to the Draft Scoping Document, the Society declined to provide comments but

conveyed anticipation of collaborating in the future “...in addressing cultural resource issues in the portion of this project located in Minnesota.” The Corps did not receive any further correspondence from the agency in response to the Supplemental EIS Scoping Document, dated July 2001.

## **Manitoba Conservation**

Manitoba Conservation “...is responsible for ensuring a high level of environmental quality for present and future generations of Manitobans.” Manitoba Conservation has the responsibility of overseeing and monitoring projects that may have an adverse affect on the environment of Manitoba. In addition, Manitoba Conservation implements and sets the standards for environmental assessments. Under the Environment Act, Manitoba Conservation has the authority to conduct environmental assessments as well as the authority to develop the standards by which these assessments are administered. In addition, Manitoba Conservation has the authority to regulate the handling and disposal of materials they qualify as being dangerous to the environment under The Dangerous Goods Handling and Transportation Act.

Manitoba Conservation has established a web page detailing its concerns with the Devils Lake project. The page was updated April 3, 2001. In general, Manitoba Conservation believes: a) an outlet would not be an effective solution for Devils Lake flooding due to limited ability to reduce lake levels, b) upper basin drainage practices effect the problem, c) biota transfer from Devils Lake to the Red River Basin is an issue due to the degree of isolation of the Devils Lake sub-basin and that d) even the best Devils Lake water represents a threat to downstream water quality. Manitoba Conservation also raises the concern of the outlet being a precursor to an inlet.

## **State of Missouri Agencies**

While not within the potential area of impact, institutions of the State of Missouri have offered comments on the proposed project. In an April 10, 1998, letter submitted in conjunction with the scoping meetings, the Attorney General of Missouri indicated that an outlet would be a precursor to an inlet and stressed the need for upper basin storage and continued disaster assistance as an alternative to an outlet. The Garrison Diversion issue is reiterated in an August 28, 1998, letter submitted by the Attorney General after the scoping meetings. In an April 10, 1998, letter submitted in conjunction with the scoping meetings, the Missouri Department of Natural Resources recommends upper basin storage and emergency assistance as alternatives to an outlet. This position is reiterated in an August 28, 1998, letter submitted after the scoping meetings. In an April 20, 2001, letter the Missouri Department of Natural Resources commented on changes to the Devils Lake study referenced in the Devils Lake Study Newsletter, Issue #4, March 2001. Department officials opposed including “*reduction of potential for a natural overflow event*” as a project purpose.

## **REGIONAL INSTITUTIONS**

Several regional institutions have been instrumental in responding to the Devils Lake flooding problem and have provided assistance and comments to the Corps regarding individual alternatives. These institutions include: North Dakota’s Water Resource Boards, the Devils

Lake Basin Joint Water Resource Board, and the Sheyenne River Joint Water Resource Board. Other regional entities within the area of impact include the Garrison Diversion Conservancy Unit, the Red River Basin Board and the Lake Emergency Management Committee.

## **North Dakota Water Resource Boards**

Water Resource Boards in North Dakota have the power to levy taxes and are the major local entities through which the state enacts water resource policy. The districts are created by the state, and the boards are appointed by county commissioners. District boundaries conform to county boundaries, with the exception of four located in Cass County. The North Dakota Water Resource Boards are governmental units charged with managing the surface water within a district's political boundaries and watersheds. Boards are established along county lines. Water Resource Boards in the study area include: Rolette County, Towner County, Cavalier County, Pembina County, Pierce County, Benson County, Ramsey County, Walsh County, Sheridan County, Wells County, Eddy County, Foster County, Griggs County, Nelson County, Grand Forks County, Steele County, Traill County, Barnes County, Ransom County, Sargent County, and Richland County, North Cass, Rush River, Maple River and Southeast Cass. The water resource boards are involved with various permitting processes including issuing drain, dam, dike, and other water storage structure permits.

The Water Resource Boards in Ransom and Cass counties have come out publicly in favor of the project, and the boards in Barnes and Griggs counties have suggested that they would prefer a controlled outlet rather than the uncontrolled flow of water down Tolna Coulee and into the Sheyenne River (February 1, 1998, article in *Fargo Forum*). The same publication states, *"Though some downstream interests oppose the planned manmade outlet that would send controlled flows down the Sheyenne, most city and county officials say an outlet is better than an unchecked flow of water."*

## **North Dakota Joint Water Resource Boards**

The North Dakota Joint Water Resource Boards are governmental units formed to manage the surface water most often for a specific purpose or to implement a project or program within a board's political boundaries and watersheds. Members of the joint water resource boards are appointed by their constituent water resource boards. There are seven joint water resource boards located within the area of potential impact. The joint water resource boards include: Devils Lake Joint Board, Red River Joint Board, Tri-County Joint Board, Rocky Run Joint Board, Hurricane Lake Joint Board, Upper Sheyenne Joint Board, and Maple-Richland Joint Board. Joint Water Resource Boards are formed under the Joint Powers Agreement, which allows individual water resource boards to cooperate on water development projects and to collectively solve water management problems. The Devils Lake Joint Board is composed of representatives of the nine county water resource boards (that comprise the Devils Lake Basin: Ramsey, Towner, Benson, Walsh, Pierce, Nelson, Eddy, Cavalier, and Rolette. The Devils Lake Joint Board has developed a comprehensive water management plan for the Devils Lake Basin. The Joint Water Resource Boards have taxing authority to finance water management projects and board operations.

The Devils Lake Basin Joint Water Resource Board, the Lake Emergency Management Committee and the City of Devils Lake have now all formally endorsed the idea of an outlet. An August 28, 1998, letter submitted by the Devils Lake JWRB states that, *"upper basin people are concerned about the people in the lower basin who are losing their land to the rising Devils Lake and see a real need for a managed outlet."*

The Sheyenne River Joint Water Resource Board has not submitted comments about the project to the Corps.

### **Garrison Diversion Conservancy District**

The Garrison Diversion Conservancy District (GDCCD) is a political subdivision of the State of North Dakota, created in 1955 by the state legislature. The concept of the Garrison Diversion arose in 1944. Various formulations of the diversion were considered culminating in the Garrison Diversion Reformulation Act of 1986. The Federal Dakota Water Resources Act of 2000 amended the 1986 Act and outlines the duties of the Garrison Diversion Unit, for which the GDCCD is responsible. The original purpose of the GDCCD was to bring water into the Red River Basin through canals in an effort to provide a stable source of water for irrigation. Since the District's inception, the overall purpose has changed, and now includes supplying water for rural, municipal and industrial uses. The Garrison Diversion Conservancy District is responsible for the development and operation of the Garrison Diversion Unit Missouri River Basin Project. In cooperation with the North Dakota State Water Commission, the Board of Directors maintains or contracts for the maintenance of irrigation and water supply within the District. The Board has the power of eminent domain and may levy taxes to cover expenses. However, the tax may not exceed one mil (\$0.001) on each dollar of taxable valuation within the District. The Board of Directors for the GDCCD also acts as the fiscal agent on behalf of the Federal government in connection with any Garrison Diversion Unit business.

The Garrison Diversion Conservancy District has not made any public statements or issued any correspondence concerning the Devils Lake project.

### **Red River Basin Board**

The Red River Basin Board (RRBB) is an international coalition that serves as a voluntary planning body for the Red River Basin. The RRBB was formed in 1997 to initiate a grass roots effort to address land and water issues in a basin-wide context. The Board has completed a set of "Guiding Principles" promoting the wise use of the Basin's resources, which in turn will lead to a framework for decision-making and future initiatives. The mission of the Red River Basin Board is *"to develop and cause to be implemented a comprehensive Water Management Plan for the Red River basin; and to facilitate and pursue the resolution of inter-jurisdictional disputes."* Local citizens, community leaders and experts were actively involved in the development of these principles. The Board is a chartered not-for-profit corporation under the provisions of Manitoba, North Dakota, Minnesota and South Dakota law. It maintains an office in Moorhead, Minnesota, and is dedicated to innovation in the management of the Red River Basin's water resources.

The Red River Basin Board is made up of a 25-member Board of Directors, comprised of mainly representatives of local government, including the cities, counties, rural municipalities, watershed boards, water resource districts, joint powers boards, as well as First Nations representation, a water supply cooperative, a lake improvement association, environmental groups, and three at-large members. The Governors of North Dakota, Minnesota, and South Dakota and the Premier of the Province of Manitoba have also appointed members to the Board. and the U.S. and Canada Federal governments each have a member appointed to the board. . Each of the 25 Board members has an alternate who attends meetings on a regular basis and votes in the Board member's absence.

The Red River Basin Board has not taken a position on the Devils Lake project. The results of the scoping meetings indicate that, in general, the people along the Red River in North Dakota and Minnesota are sympathetic to the plight of residents in the Devils Lake area but are concerned about the potential for water quality and quantity problems downstream. There is also some concern about the cost of the project and its inability to have a dramatic effect on Devils Lake flooding problems (*Grand Forks Herald*, September 27, 1996 article). The Board expressed support for Manitoba's direct involvement in the NEPA process as shown in the Board's meeting minutes dated June 22, 2000. The minutes state, "*The Board supports an EIS that includes the Canadian portion of the Basin, and brings the Canadian interest as full partner in the process.*"

### **Lake Emergency Management Committee**

The Lake Emergency Management Committee was established in May 1995 is composed of elected officials from the Devils Lake Basin, including state senators from Districts 12, 15, and 23, the mayors of Minnewaukan and Devils Lake, the chairmen of the Benson, Nelson, and Ramsey county commissions, and the chairperson of the Spirit Lake Sioux Tribe. The Committee has been involved in the resolution of short-term emergency problems concerning flooding and seeks a long-term resolution to the problem, as well. The Committee has solicited public opinions through a series of meetings.

The Lake Emergency Management Committee is empowered to speak for its members formally endorsed the idea of a Pelican Lake outlet in at a meeting convened in November 2001.

### **COUNTY INSTITUTIONS**

The counties (and their respective water management boards in North Dakota) include all of the counties within the Devils Lake Basin, counties downstream on the Sheyenne River, and counties downstream on the Red River. North Dakota county's participation in the planning process comes through their water resource board, joint water resource board or other groups such as the Lake Emergency Management Committee.

### **MUNICIPAL INSTITUTIONS**

Municipal institutions include cities and towns in the Devils Lake Basin, downstream along the Sheyenne River, downstream along the Red River in the United States, and downstream along

the Red River in Manitoba. Corps scoping meetings were held at many of the principle municipalities within the area of potential impact, including: Valley City, Lisbon, Cooperstown, Fort Totten, Devils Lake, Grand Forks, and Fargo.

### **City of Devils Lake**

The City of Devils Lake operates under a five member City Commission headed by a President and Vice President. The City is a member of the Lake Emergency Management Committee and holds opinions consistent with that group. The City supports an emergency outlet as part of a three-pronged approach which includes incentives for upper basin wetland restorations and raising and rebuilding local infrastructure and construction of an outlet (Devils Lake Area Chamber of Commerce web page accessed October 30, 2001).

### **City of Grand Forks**

In a meeting conducted to solicit responses to the Corps' emergency outlet plan, the Mayor of Grand Forks, North Dakota, stated that Red River residents had a responsibility to help with the situation developing in the Devils Lake area (*Devils Lake Journal* article, September 27, 1996). A September 10, 1996, letter submitted in conjunction with the scoping meetings reiterated that, "*The City of Grand Forks feels that a cooperative effort is needed to relieve the rising waters of Devils Lake,*" but expressed concerns about water quality.

### **City of Moorhead**

The City of Moorhead, Minnesota, supports an outlet because of its water supply needs (*Devils Lake Journal*, March 30, 1998).

### **Valley City**

Valley City is concerned about increased flooding and water quality and fears that it might have to go to great expense to upgrade its water treatment plant due to potential water quality impacts if an outlet were constructed to relieve Devils Lake flooding (*Times Record*, February 18, 1997; *Devils Lake Journal*, February 12, 1997).

### **Winnipeg**

The City of Winnipeg, Manitoba, Canada, is granted powers under the Chapter 105 of the Statutes of Manitoba known as the City of Winnipeg Act (July 27, 1971). With regards to water related issues, the City has full authority concerning protection against floods, construction and maintenance of drains and watercourses and pollution. One exception to this authority is that the Province of Manitoba owns and operates the Red River Floodway project.

No evidence was found of public statements or correspondence concerning the project by city officials. A search of the city's web site revealed no mention of the outlet.

## **NON-GOVERNMENTAL ORGANIZATIONS**

There are multiple special non-governmental organizations (NGOs) with an interest in the management of land and water resources throughout the area of potential impact. These interest groups include environmental organizations such as the National Audubon Society, National Wildlife Federation, American Rivers, Lake Region Wildlife Club, Ducks Unlimited, and the Sierra Club.

Some environmental groups have presented comments concerning the potential construction of an outlet. They strongly favor upper basin storage and are concerned about water quality, water quantity, erosion, sedimentation, endangered species, fisheries, and biota and pathogen transfer. They do not think this is an emergency situation, maintain that the normal EIS process should be followed, doubt that the project is technically or economically feasible, assume that an outlet is a component of Garrison Diversion, and stress the need for special attention to the Spirit Lake Sioux Tribe in the planning process (*Devils Lake Journal*, February 2, 1998; *Fargo Forum*, October 24, 1997).

### **National Audubon Society**

The Society echoed the above sentiments in an April 8, 1998, letter submitted in conjunction with the scoping meetings and an August 24, 1998, letter submitted by the National Audubon Society after the scoping meetings. In an April 16, 2001, letter submitted after April 2-5, 2001 scoping meetings, the National Audubon Society reiterated concerns regarding the impact of drainage practices within the Devils Lake basin, future without project assumptions, and downstream impacts on river morphology, water quality and biota transfer. Society representatives continue to favor in-basin measures, support consolidating the Corps EIS process with anticipated Bureau of Reclamation efforts, and request that an earlier draft EIS be made available to the public.

### **National Wildlife Federation**

The Director of the Prairie Wetlands Resource Center of the National Wildlife Federation submitted a written statement for a North Dakota State Congressional Hearing on the Garrison Conservancy District on December 18, 1996. That statement also presented comments regarding the Federation's views on the Devils Lake flooding problem. The Federation opposed any attempt to link Devils Lake to the diversion and labeled the idea of an emergency outlet controversial "...due to problems associated with water quality, erosion and sedimentation problems,". They and expressed support for upper basin storage, road raises, flood-proofing measures like diking and emergency programs to assist flood victims.

The Federation has listed the Devils Lake Emergency Outlet as one of its "Top 25 Harmful Corps Projects" (NWF Webpage accessed 11/1/01)

## **Lake Region Wildlife Club**

The Lake Region Wildlife Club withdrew from the North Dakota Wildlife Federation on the grounds that the National Wildlife Federation was opposing the project in order to secure more wetland acreage (*Devils Lake Journal* article, April 4, 1997).

## **Peterson Coulee Outlet Association**

The Peterson Coulee Outlet Association was formed to protect the interests of landowners along the Peterson Coulee outlet alignment.

The Peterson Coulee Outlet Association is opposed to the construction of a Devils Lake outlet (*Devils Lake Journal* article, May 28, 1998). In a set of comments prepared on March 3, 1998, for the scoping meetings, the association states that the Devils Lake problem is not an emergency situation, that the project should be suspended until legal issues concerning lake and land ownership are resolved with the Spirit Lake Tribe, and that the NEPA process should be fully adhered to. This position is reiterated in an August 27, 1998, letter submitted after the scoping meetings. In an April 17, 2001, letter submitted after April 2-5, 2001 scoping meetings, the Peterson Coulee Outlet Association reaffirmed its earlier comments and offered nearly 100 additional comments outlining perceived deficiencies in the *Scoping Document, Volume I Background and Issues*, dated February 1999. These points were raised again in a meeting with Corps consultants on September 11, 2001.

## **Devils Lake Outlet Management Advisory Committee**

A Devils Lake Outlet Management Advisory Committee has been formed by North Dakota to provide advice on outlet operations, should one be constructed. The Committee was established under NDCC 61-36-01 and consists of nine members serving four year terms. The members are three appointed by the Governor, one appointed by the Red River Joint Water Resource Board, one appointed by the Devils Lake Joint Water Resource Board, one County Commissioner from Ramsey, one County Commissioner from Benson County, one representative of the Spirit Lake Nation and the State Engineer.

## **People to Save the Sheyenne**

People to Save the Sheyenne represents itself in an April 5, 1998, letter submitted to the Corps in conjunction with the scoping meetings as "*a grass-roots organization representing over 1,200 petition signers opposed to the building of an outlet from Devils Lake to the Sheyenne River.*"

The group is opposed to a Devils Lake outlet, based on: 1) potential water quality effects on water users, on instream environmental resources, and on the riparian zone; and 2) potential flooding effects. This group identifies upper basin storage as the best solution to the Devils Lake flooding problems. These positions have been stated in correspondence and in various meetings (e.g., *Devils Lake Journal*, February 3, 1998; *Times Record*, February 19, 1997). The group expressed continued opposition to the building of an outlet in a meeting with Corps consultants in September 2001, and in a Corps public information meeting conducted in October 2001.



**TABLE 1  
INSTITUTIONAL ANALYSIS SUMMARY**

SCOPE	INSTITUTION	APPLICABLE AUTHORITIES	JURISDICTION
International	International Joint Commission	Boundary Waters Treaty of 1909	Must approve any resulting project with the potential to impact transboundary waters
	International Red River Board	Boundary Waters Treaty of 1909	Will present concerns through the IJC
National: U.S.	U.S. Army Corps of Engineers	Rivers & Harbors Acts of 1890 & 1899, Federal Water Pollution Control Act	Proposing Agency
	U.S. Department of Agriculture – Forest Service	Forest & Rangeland Renewable Resources & Planning Act 1974, National Forest Mgmt. Act	Interested Agency
	U.S. Fish and Wildlife Service	Endangered Species Act, National Environmental Policy Act, & the Clean Water Act	Must agree that any resulting project does not create unmitigated impacts to endangered species.
	U.S. Bureau of Reclamation	None	Interested Agency
	U.S. Environmental Protection Agency	Clean Water Act	Must agree that resulting project does not create unmitigated impacts to water quality
	U.S. Bureau of Indian Affairs	Various Treaties,, Native American Graves Protection and Repatriation Act	Interested Agency
	Spirit Lake Tribe	1867 Treaty between the U.S. and the Sisseton Wahpeton Sioux	Must agree that resulting project does not abrogate the sovereign rights of the Tribe.
National: Canada	Environment Canada	Canadian Water, International Rivers Improvements, Wildlife and Environmental Assessment Acts	Will present concerns through the IJC
	Canadian Department of Foreign Affairs	International Boundary Waters Treaty of 1909	Will present concerns through the IJC
State: North Dakota	N.D. State Water Commission	NDCC 57-51.1-07, 61-02-149 (See appendix for a complete list),	Must approve and recommend funding for any resulting project.
	N. D. Game and Fish Department	NDCC 20.1-02	Must agree that project does not create unmitigated impacts to state game & fish resources.

**TABLE 1**  
**INSTITUTIONAL ANALYSIS SUMMARY**

SCOPE	INSTITUTION	APPLICABLE AUTHORITIES	JURISDICTION
State: North Dakota	N.D. Dept. of Health Environmental Health Section	NDCC 23-01	Must agree that any resulting project does not create unmitigated impacts to state water quality.
	N.D. State Parks and Recreation Dept.	NDCC 55-08	Must agree that any resulting project does not create unmitigated impacts to state parks/preserves.
	N.D. Department of Agriculture	State Constitution, Article V, Section 12 and NDCC 4-01	Must agree that any resulting project does not create unmitigated impacts to state farmers, ranchers or rural communities.
	N.D. State Historical Society	NDCC 55-01	Must agree that any resulting project does not create unmitigated impacts to state historic/pre-historic resources.
	N.D. Forest Service	NDCC 4-19	Must agree that any resulting project does not create unmitigated impacts to state forest lands.
State: Minnesota	Minn. Pollution Control Agency	MN Statute 115.03	Must agree that any resulting project does not create unmitigated impacts to state water quality.
	Minn. Department of Natural Resources	MN Statute 103A.201(See appendix for a complete list)	Must agree that any resulting project does not create unmitigated impacts to state water, fish or wildlife.
	Minn. Department of Health	MN Statute 103I.101	Must agree that any resulting project does not create unmitigated impacts to state water quality
	Minn. Historical Society		Must agree that any resulting project does not create unmitigated impacts to state historic/pre-historic resources
Province: Manitoba	Manitoba	Water Resource Administration Act (See appendix for complete list)	Will present concerns through the IJC

**TABLE 1  
INSTITUTIONAL ANALYSIS SUMMARY**

SCOPE	INSTITUTION	APPLICABLE AUTHORITIES	JURISDICTION
State: Missouri	Missouri Agencies	None	Interested Agencies
Regional	N.D. Water Resource Boards	NDCC 61-16	Interested Agency.
	N.D. Joint Water Resource Boards	NDCC 61-16.1-11	Interested Agency
	Garrison Diversion Conservancy Dist.	NDCC 61-24	Interested Agency
	Red River Basin Board	None	Interested Agency
	Lake Emergency Mgmt Committee	None	Interested Party
Municipal	City of Devils Lake		
	City of Grand Forks	None	Interested Party
	City of Moorhead	None	Interested Party
	Valley City	None	Interested Party
	Winnipeg	City of Winnipeg Act	Will present concerns through the IJC
NGO	National Audubon Society	None	Interested Party
	National Wildlife Federation	None	Interested Party
	Lake Region Wildlife Club	None	Interested Party
	Red River Coalition	None	Interested Party
	Peterson Coulee Outlet Association	None	Interested Party
	Devils Lake Outlet Mgmt. Adv. Committee.	None	Interested Party
	People to Save the Sheyenne	None	Interested Party

## APPENDIX A

### RELEVANT LEGAL AUTHORITIES

#### INTERNATIONAL

**The International Boundary Water Treaty Act-** Administered by the Department of Foreign Affairs, the International Boundary Water Treaty Act defines the jurisdiction under which the International Joint Commission, established under the Canada-United States Boundary Waters Treaty of January 11, 1909, carries out its mandate to make recommendations regarding use, obstruction, and diversion of boundary waters. The laws of Canada and the Provinces were to be amended to permit the obligations of the treaty to be undertaken. Any interference with or diversion of boundary waters by Canada, which negatively impact the United States, would be legally remedied as if the impacts occurred in that part of Canada.

#### NATIONAL - UNITED STATES

**NEPA (National Environmental Policy Act of 1969)-** The purposes of this act are to: establish/encourage a more balanced and healthy relationship between man and the environment; to encourage activities which will prevent or even eliminate activities that are harmful both to the environment and biosphere; to encourage a public understanding of the importance of our natural resources; and to establish a Council of Environmental Quality. Projects requiring Federal involvement must comply with environmental review to identify impacts on the environment.

**Clean Water Act-** An amendment to the Federal Water Pollution Control Act of 1972. (The Federal Water Pollution Control Act of 1972 provided the basic standards for the regulation of pollutant discharges into the waters of the United States.) The CWA allows the EPA to set effluent standards for the discharge of contaminants into the surface waters of the United States. Furthermore, it makes it illegal to discharge (from a point source) any pollutant into navigable waters unless those releasing the pollutant have obtained a permit (NPDES) under the CWA.

**Clean Air Act-**The Clean Air Act regulates the emissions from area, stationary, and mobile sources. This law promotes the development of National Ambient Air Quality Standards (NAAQS) which are established by the EPA. In fact, the setting of NAAQS in each of the fifty states was the primary objective of this act. In 1990 a number of amendments were made to the Clean Air Act in order to address environmental issues which had been insufficiently addressed such as acid rain, ground-level ozone, stratospheric ozone depletion, and air toxins.

**Resource Conservation and Recovery Act-**This act gives the EPA the ability to control hazardous wastes from the “cradle to grave.” This allows the EPA to oversee all aspects of hazardous waste including generation, transport, treatment, storage, and ultimately disposal. The 1984 amendments to the RCRA which deal with the phasing out of land disposal of hazardous wastes are the Federal Hazardous and Solid Waste Amendments (HSWA).

**Safe Drinking Water Act-**This act was developed to specifically protect, improve, and maintain quality drinking water in the United States. This act takes into account all sources of water that can potentially be used for drinking water purposes. This would include sources of

water both above and below ground. The Safe Drinking Water Act also imposes strict standards by which public sources of drinking water supply their water.

**Oil Pollution Act of 1990-** This act enables the EPA to more efficiently respond and prevent oil spills. The Oil Pollution Act also set up a trust which provides funds in the event of an oil spill where the responsible party is either financially unable or simply refuses to incur any clean-up costs. The Oil Pollution Act also requires petroleum storage facilities and transport vessels to outline how they would respond to a catastrophic spill event.

**Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)-** This act was enacted by congress in 1980 and is commonly known as Superfund. CERCLA created a tax which is imposed on the chemical and petroleum industries and gives the Federal government more authority when dealing with unintentional/unlawful releases of hazardous wastes. The funds collected from this tax have been put into a trust fund which finances hazardous waste clean-up efforts.

**Superfund Amendments and Reauthorization Act (SARA)-**SARA amended CERCLA in 1986. After the EPA had been administering CERCLA for six years, it became apparent that a number of modifications to the original act were needed. SARA: emphasized the importance of long term solutions and treatments of hazardous wastes; required that future Superfund actions take into account other State and Federal Environmental regulations and standards; increased the involvement of States; stressed the importance of recognizing threats to human health that may result from careless use of hazardous waste; encouraged the general public to become more involved in decisions regarding the disposal of hazardous wastes; and increased the size of the fund to \$8.5 billion.

**Emergency Planning and Community Right-to-Know Act-**The EPCRA was created to assist communities in protecting public health, safety, and the environment from chemical hazards. In order to implement the EPCRA, communities are required to appoint a State Emergency Response Commission (SERC) which in turn separate their state into more localized divisions which are called Local Emergency Planning Committees (LEPC).

**Endangered Species Act-**The Endangered Species Act promotes the conservation of endangered plants and animals as well as the habitats in which these species are found. The U.S. Fish and Wildlife Service maintains a list of endangered plants and animals. Under the provisions of this act it is unlawful to participate in the “taking” of any of the listed endangered species. It is also unlawful to adversely manipulate the habitat of an endangered species in addition to the import, export, interstate, and foreign commerce of listed species.

**Federal Insecticide, Fungicide, and Rodenticide Act-**FIFRA was primarily developed to give the EPA greater control over the sale and use of pesticides. Later amendments to the bill required that all pesticides used in the United States be registered and that all persons involved in their application be certified. By requiring the registration of pesticides, the EPA can better determine the potential environmental risks posed by these chemicals.

**Federal Food, Drug, and Cosmetic Act-**The Federal Food, Drug, and Cosmetic Act outlines the maximum allowable pesticide residue levels in foods produced using these chemicals. These tolerances are enforced by the Food and Drug Administration.

**Toxic Substance Control Act-**Congress developed the TSCA to give the EPA a more reliable way of tracking some 75,000 industrial chemicals used in the United States. The EPA keeps

close track of those chemicals which pose environmental risks, and retain the ability to ban the use/import of potentially harmful chemicals as they deem necessary.

**The Food Quality Protection Act**-The Food Quality Protection Act was strongly supported in 1996 by a broad coalition of public health, environmental, industrial, and agricultural groups. The FQPA was an amendment to two previous acts, the Federal Insecticide, Fungicide, and Rodenticide act, and the Federal Food, Drug, and Cosmetic Act. The newly developed FQPA: set single standards for pesticides used in the production of foods; provided greater protection for infants and children; encourages the approval of safe pesticides; and called for frequent re-evaluation of pesticide safety and tolerance levels.

**National Historic Preservation Act:** The National Historic Preservation Act protects and preserves historic and cultural environmental attributes.

**Wild and Scenic River Act**-In the late 1960's, it became apparent that a number of the rivers within the United States were being either dammed, dredged, diked, diverted, and degraded at an alarming rate. In response, congress developed the Wild and Scenic River Act which designated a number of rivers, which were felt to have outstanding characteristics, to be left in their original free-flowing condition. This act protects designated rivers from most development (including Federally licensed dams and diversions) on publicly held lands. However, development on private land along the corridors of these protected river segments is still permitted.

**Rivers and Harbors Act**-This act prohibits the construction of any structure that will influence or adversely affect the navigation or flow of any US waterway. Any construction, modification, or improvements to rivers or navigable waterways must first be approved by the Department of the Army.

**Fish and Wildlife Coordination Act**-This act requires that the Secretaries of Agriculture work with State and Federal agencies to "protect, rear, stock, and increase" quantities of game. Also, the FWCA required studies of sewage, trade wastes, and other polluting substances to see how they influence or adversely affect wildlife. A later amendment required consultation with the Fish and Wildlife service before the construction or modification of any stream or river structure (under Federal permit or license) that may influence wildlife numbers in the affected areas.

**Floodplain Management Executive Order 11988**-Prior to the development of Executive Order 11988, studies had concluded that the number of losses throughout the US from flood damages were steadily increasing despite increased funding and construction of flood control devises. Previous studies further concluded that non-structural, in addition to structural mitigation efforts would be needed to more effectively deal with flood hazards.

Executive Order 11988 directed Federal agencies to make efforts toward reducing flood damages through mitigation efforts when avoidance was not permissible. EO 11988 also outlined a mandatory cooperation between the WRC, Council on Environmental Quality, and the Federal Insurance Administration. This cooperation effort was encouraged to improve procedure development within these agencies.

**1996 Farm Bill**-The 1996 Farm Bill includes a number of conservation related provisions. In addition, the 1996 Farm Bill attempts to simplify existing programs, and encourages higher standards for protecting the environment.

## **NATIONAL – CANADA**

**Navigable Waters Protection Act-** The Navigable Waters Protection Act, under the Minister of Transport, ensures that navigable water remain open to navigation. The Act requires that any works which are built or placed in, on, over, under, through or across any navigable water, that substantially interferes with navigation, be approved by the Minister; and any vessel that obstructs or endangers a navigable water be reported to the Minister or to the chief officer of customs and excise. The Act prohibits the deposition of wood products, earth materials or rubbish into the waters; and established regulations to govern ferry cable and swing or draw bridges.

**Dominion Water Power Act-** Administered by the Ministry of Indian and Northern Affairs, the Dominion Water Power Act provides authority for establishing and managing water power installations on Federal lands. The Act applies to all public lands required and acquired in connection with the development or working of water-powers and to the power and energy produced.

**Canada Water Act-** The Canada Water Act provides the basis for Federal-provincial co-operation in water resource management, water quality management and conservation. It includes the authority to conduct research, make inventories; develop comprehensive management plans and establish special water quality management areas to address concerns with waste. Formulation of policies and programs are carried out through intergovernmental committees. Ministry of Environment Administers the Act.

**International River Improvements Act-** Administered under the Ministry of Environment, the International River Improvements Act pertains to dams, canals or any other work, the purpose or effect which is to increase, decrease or alter the natural flow of an international river or to interfere with, alter or affect the actual or potential use of the international river outside Canada. The construction, operation or maintenance of an international river outside Canada. The construction, operation or maintenance of an international river improvement requires licensing and is subject to the same laws of the legislature of the province in which it is situated. This Act does not apply in respect of an international river improvement situated with boundary waters or constructed, operated or maintained solely for domestic, sanitary or irrigation purposes or other similar consumptive uses.

**Canada Shipping Act-** Under the jurisdiction of Transport Canada, the Canada Shipping Act provides authority relating to shipping and navigation in Canadian water and waters in the exclusive economic zone of Canada. It also provides for prevention of pollution by oil and other pollutants resulting from marine activities.

**Fisheries Act-** Department of Fisheries and Oceans is responsible for administration of the Fisheries Act which prevents obstructions across streams and provides for the regulation of fishing, management of fish stocks, fish habitat protection and pollution prevention measures. Ministerial approval is required for any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat.

**Canada Wildlife Act-** Being an act of the Ministry of Environment, the Canadian Wildlife Act applies to a species that is wild by nature and the habitat of any such animal, plant or other organism. Habitat includes any water on or flowing through land belonging to Canada. The Minister may designate an area as a wildlife area. Within a wildlife area no person shall damage

or destroy or remove an plant or destroy or molest animals, nests or eggs thereof, without a permit issued by the Minister. Manitoba has two designated wildlife areas, Pope National Wildlife Area in the R.M. of Hamiota and Rockwood National Wildlife Area in the R.M. of Rockwood.

**The Migratory Birds Convention Act-** The Migratory Birds Convention Act implements a Convention of Project migratory birds and nests in Canada and the United States. A permit, issued by the Minister of Environment, is required to carry on any activity that may harm migratory birds or eggs, nests or habitat in a migratory bird sanctuary. There are no designated migratory bird sanctuaries in Manitoba however, under the Act no person shall deposit or permit to be deposited oil, oil wastes or any other substance harmful to migratory birds in any waters or any area frequented by migratory birds.

**The Prairie Farm Rehabilitation Act-** Rehabilitation of drought and soil drifting areas is provided for in the Prairie Farm Rehabilitation Act, administered by Agriculture Canada. Through establishment of Prairie Rehabilitation Committees the Minister is advised as to the best methods to develop and promote systems of water supply that will afford the greatest economic security. The Act also empowers the Minister to undertake the development, operation and maintenance of any project and enter into agreement with any province, municipality or person.

**Canadian Environmental Assessment Act-** The purpose of the Canadian Environmental Assessment Act is to ensure environmental effects of a project are considered, promote sustainable development, eliminate duplication of project assessment, and provide an opportunity for public participation. any project where a Federal authority is the proponent, makes or authorizes financial assistance, or sells, leases or disposes of Federal lands to a province for a project is required to undergo an environmental assessment. Projects may be either a physical work or physical activity. Regulations stipulate what projects are required to apply for a permit or license under the Act. The Act also establishes the Canadian Environmental Assessment Agency who advises the Minister of Environment and administers the environmental process.

**Indian Act-** Administered by the Minister of Indian and Northern Affairs, the Indian Act addresses matters relating to Indian affairs and reserve land. Any non band member who wishes to occupy or use a reserve to otherwise exercise rights on a reserve requires a permit from the Minister. Regulations may be made by the Governor in Council and by-laws may be made by the Council of a band regarding the preservation, protection and management of fur-bearing animals, fish and other game on the reserve.

**The International Boundary Commission Act-** The international Boundary Commission Act enables the International Boundary Commission to maintain the demarcation of the boundary line between Canada and the United States. The commission is empowered to control any works within ten feet of the boundary line.

## **State – North Dakota**

**Water Supply: Municipal, Industrial and Agricultural –** The North Dakota State Water Commission NDSWC uses the Municipal, Rural and Industrial Water Supply Program to provide a consistent supply of affordable and safe water to North Dakota Residents under NDCC 89-12-01-02. Funding is provided for qualifying projects with 65% Federal 35% local



cost-sharing. Limited additional funding for domestic (50% local); rural (50% local); agricultural (60 % local); and recreation (66.6% local) water supply projects is provided under NDCC 61-01-14 and NDCC 57-51.1-07

**Water Supply: Rural and Other Community Programs** – Permitting of water well construction and certification of water well contractors is addressed under NDCC 33-18-01, NDCC 23-01, NDCC 43-35 and NDCC 61.28.1

**Flood Control** – The NDSWC provide funding for local flood control projects (50% -65% local) under NDCC 57-51.1-07 and NDCC 61-01-14

**Dams & Dam Safety** – The NDSWC is responsible for dam safety and may cost share in maintenance as a flood control project (50% local)

**State Water Planning** – The NDSWC is responsible for the commission and updating of the State Water Management Plan under NDCC 61-02-01.1

**Water Conservation** – The authority, control and supervision of all water and wildlife conservation projects and wildlife reservations shall be vested in the State Engineer under NDCC61-15-03.

**Ground Water Resources** – The Department of Health in cooperation with the State Engineer and the State Geologist shall assist in implementing a public water supply well head protection program under NDCC 22-33-10.

**Ground Water Resources** – The NDSWC is charged with permitting and monitoring the state's ground water resources under NDCC61-20-06 and NDCC 61-04-02.

**Fisheries Management** – The North Dakota Parks and Recreation Department directs identification of sensitive species and plant communities in all landscape settings including deep water habitats, riparian and wetland areas under NDCC55-11

**Water Quality Management** – The policy of North Dakota is to act in the public interest to protect, maintain and improve the quality of the waters of the state for continued use as public and private water supplies, by populations of wildlife, fish and aquatic life, and for domestic, agricultural, industrial, recreational and other legitimate beneficial uses under NDCC 33-16-02.

**Water Quality Management** – Use of chemicals within or adjacent to water supplies is regulated under NDCC 55-11.

**Water Quality Management** – The Water Pollution Control Board is established to prevent and control the pollution of water in the state under NDCC 61-28-03.

**Water Quality Management** – Certification of water/wastewater treatment, distribution, storage facility operators is addressed under NDCC 33-19-01

**Water Quality Management** – A Revolving Loan Fund to assist water quality related projects and as the reserve for Section 319 Non-point Source Management Projects is established under NDCC 33-35.

**Surface Water Quality Protection** – Pollutant discharge, effluent standards and limitations and water quality standards are regulated under NDCC 33-16-01.

**Wetlands** – The North Dakota State Waterbank Program encouraging landowners to conserve wetlands through short-term (5-year and 10-year) renewable leases is established by NDCC 66-31.

**Water Supply** – The NDSWC is charged with ground and surface water permitting and allocation under NDCC 61-04-06.2, 89-03-01-01.1 and 89-03-03-04.

**Water Supply** – The allocation of water rights permits is administered by the NDSWC under NDCC 61-04.

## **State – Minnesota**

**Minnesota State Statute 103B.451 - South Dakota-Minnesota boundary waters commission** - An interstate commission known as the South Dakota-Minnesota boundary waters commission is established. The commission shall have power and authority: (1) to investigate and determine the most desirable and beneficial levels of boundary waters artificially controlled and to prescribe a plan for controlling and regulating water levels.

**Minnesota State Statute 97C.045 - Removal of rough fish from boundary waters-** Authorizes commissioner to enter into multi-state agreements relating to the removal of rough fish in boundary waters.

**Minnesota State Statute 116P.01 - Environmental Trust Fund** - Establishes the environmental trust fund for wise stewardship of the state's environment and natural resources for the benefit of current citizens and future generations.

**Minnesota State Statute 86.71 - Federal land and water fund** - Authorizes to apply for, accept, receive and disburse Federal funds and private funds which are granted to the state of Minnesota from the Federal Land and Water Fund Act.

**Minnesota State Statute 103A.201 – Water regulatory policy** - Establishes policy to conserve and use water resources of the state by controlling the public waters; controlling the appropriation and use of waters of the state; and controlling any activity that changes or will change the course, current, or cross section of public waters, including the construction, reconstruction, repair, removal, abandonment, alteration, or the transfer of ownership of dams, reservoirs, control structures, and waterway obstructions in public waters.

**Minnesota State Statute 103G.101 Water conservation program** - The commissioner shall develop a water resources conservation program, which must include conservation, allocation, and development of waters of the state for the best interests of the people.

**Minnesota State Statute 86B.001 - Water use policy** - It is the policy of this state, which is blessed with an abundance of water, to promote its full use and enjoyment by all of the people, now and in the future, to promote safety for persons and property in connection with the use of

the waters of the state, to promote uniformity of laws relating to the use, and to conform with use requirements of the United States.

**Minnesota State Statute 103G.201 - Public waters inventory** - Authorizes the commissioner to prepare a public waters inventory map of each county and file each county's public waters inventory map with the auditor of the county.

**Minnesota State Statute 103H.275 Management of pollutants where ground water is polluted** - (a) If groundwater pollution is detected, a state agency or political subdivision that regulates an activity causing or potentially causing a contribution to the pollution identified shall promote implementation of best management practices to prevent or minimize the source of pollution to the extent practicable.

**Minnesota State Statute 103H.251 - Evaluation of detection of pollutants** - Establishes practices to evaluate the detection of pollutants in groundwater of the state.

**Minnesota State Statute 103G.255 - Water allocation** - Authorizes the commissioner to administer the use, allocation, and control of waters of the state; establish, maintain, and control levels of lakes and water storage reservoirs; and determine the ordinary high water level of waters.

**Minnesota State Statute 103G.261 – Water allocation priorities** - Authorizes the commissioner to adopt rules for allocation of waters based on five priorities: domestic water supply and use for power production; consumption of less than 10,000 gallons of water per day; agricultural irrigation, and processing of agricultural products involving consumption in excess of 10,000 gallons per day; power production in excess of the use, and uses, other than agricultural irrigation, processing of agricultural products, and power production, involving consumption in excess of 10,000 gallons per day; and nonessential uses. Discourages diversions of water from the state for use in other states or regions of the United States or Canada.

**Minnesota State Statute 103G.265 - Water supply management** - Authorizes the commissioner to develop and manage water resources to assure an adequate supply to meet long-range seasonal requirements for domestic, municipal, industrial, agricultural, fish and wildlife, recreational, power, navigation, and quality control purposes from waters of the state.

**Minnesota State Statute 103G.271 - Appropriation and use of waters** - Requires a permit from the commissioner to appropriate or use waters of the state without a water use permit from the commissioner.

**Minnesota State Statute 103 G.285 - Surface water appropriations** - Limits appropriation of water from natural and altered natural watercourses to protect low flows.

**Minnesota State Statute 103G.295 - Irrigation of agricultural land** - Defines use of groundwater for irrigation of agricultural land.

**Minnesota State Statute 115.03 - Powers and duties of pollution control agency** - Establishes powers and duties of pollution control agency :To prevent pollution of waters of the state; including enforcement, research, treatment, classification of waters; regulating all discharges to waters of the state consistent with and subject to the provisions of section 306(d) of the Amendments of 1972 to the Federal Water Pollution Control Act.

**Minnesota State Statute 115A.02 – Waste management policy** - Authorizes agency to improve waste management by reduction, separation and recovery of materials; reduction in indiscriminate dependence on disposal of waste; coordination of solid waste management among political subdivisions; and orderly and deliberate development and financial security of waste facilities.

**Minnesota State Statute 115.061 - Duty to notify and avoid pollution** - It is the duty of every person to notify the agency immediately of the discharge, accidental or otherwise, of any substance or material under its control which, if not recovered, may cause pollution of waters of the state, and the responsible person shall recover as rapidly and as thoroughly as possible such substance or material and take immediately such other action as may be reasonably possible to minimize or abate pollution of waters of the state caused thereby.

**Minnesota State Statute 115.42 – Prevent water pollution** - Establishes state policy to provide for the prevention, control, and abatement of pollution of all waters of the state, so far as feasible and practical, in furtherance of conservation of such waters and protection of the public health and in furtherance of the development of the economic welfare of the state by: (a) preventing any new pollution and (b) abating pollution existing.

**Minnesota State Statute 115.44 – Classification of waters** - Classifies waters of the state and establishes water quality standards.

**Minnesota State Statute 103F.715 - Clean water partnership program established** - .A clean water partnership program is established As a basis for the program, the agency and the metropolitan council shall conduct an assessment of waters The agency shall then provide financial and technical assistance to local units of government for projects in geographical areas that contribute to surface or ground water flows. The projects shall provide for protection and improvement of surface and ground water from nonpoint sources of water pollution.

**Minnesota State Statute 115D.02 – Toxic pollution prevention policy** - Establishes state policy to prevent toxic pollution by preventing toxic pollution are techniques and processes that are implemented at the source and that minimize the transfer of toxic pollutants from one environmental medium to another.

**Minnesota State Statute 116.49 - Point source pollution – UST program** - Authorizes agency to adopt rules applicable to all owners and operators of underground storage tanks.

**Minnesota State Statute 116.41 - Waste and waste facilities training and certification** - Authorizes agency to develop standards of competence for persons operating and inspecting various classes of disposal facilities. The agency shall require operators and inspectors of such facilities to obtain from the agency a certificate of competence.

**Minnesota State Statute 115.19 – Sanitary districts** - A sanitary district may be created for the purpose of promoting the public health and welfare by providing an adequate and efficient system and means of collecting, conveying, pumping, treating and disposing of domestic sewage and garbage and industrial wastes.

**Minnesota State Statute 444.17 – Establishment of storm sewer tax district** - The governing body of a municipality may by ordinance adopted by a two-thirds vote of all of its members, establish within its territorial limits a storm sewer improvement tax district.

**Minnesota State Statute 103L.101 - Powers and duties of commissioner of health** - The commissioner shall regulate drillings and operation of wells, well borings, etc.

**Minnesota State Statute 144.35 - Pollution of Water** - Authorizes commissioner to prevent pollution from draining to ground water or surface water.

**Minnesota State Statute 444.26 - Towns; powers, right of eminent domain** - For the purpose of designing, planning, improving, and constructing a wastewater treatment system, any town may exercise the right of eminent domain to acquire private property within or without the limits of the town for the purpose of carrying out the authority provided .

**Minnesota State Statute 446A.06 – Independent wastewater treatment grants** - The authority shall award independent state grants to municipalities selected by the pollution control agency upon certification.

**Minnesota State Statute 446A.07 – Water pollution control revolving fund** - The authority shall establish a water pollution control revolving fund.

**Minnesota State Statute 446A.081 – Drinking water revolving fund** - The authority shall establish a drinking water revolving fund to provide loans and other forms of financial assistance authorized by the act, as determined by the authority under the rules adopted.

**Minnesota State Statute 103G.505 – Dam construction and maintenance** - Authorizes the commissioner to construct, maintain, and operate dikes, dams, and other structures necessary to maintain uniform water levels established under this chapter to improve navigation, protect and improve domestic water supply, protect and preserve fish and other wildlife, protect the public interest in the shore and shorelines of public waters, and promote public health.

**Minnesota State Statute 103G.511 - Dams & Dam Safety** - Authorizes commissioner to develop program to guide permit issuance and dams.

**Minnesota State Statute 103E.011 - Drainage** Establishes guidance and permit authority for local drainage authority.

**Minnesota State Statute 110A.01 –** Establishes policy to create water user districts - Conservation of the state's water resources is a state function, and the public interest, welfare, convenience, and necessity require the creation of water user districts and the construction of systems of works, in the manner provided, for the conservation, storage, distribution, and use of water. The construction of systems of works by districts, as provided, is hereby declared to be in all respects for the welfare and benefit of the people of Minnesota.

**Minnesota State Statute 103G.293 – Statewide drought plan** - Authorizes commissioner to establish and implement a statewide drought response plan.

**Minnesota State Statute 103B.252 – Emergency Flood Response** - Authorizes local units of government to declare flood emergencies and perform work to respond to the emergency.

**Minnesota State Statute 103A.207 – Floodplain management policy** - Establishes policies of the state regarding floodplain management,.

**Minnesota State Statute 103H.001 – Degradation prevention goal** - It is the goal of the state that groundwater be maintained in its natural condition, free from any degradation caused by human activities. The agency shall conduct an assessment of waters of the state that have been polluted by nonpoint sources and of geographical areas with waters of the state that have a high

potential for water pollution caused by nonpoint sources.

**Minnesota State Statute 103A.204 - Ground-water policy** - Establishes the responsibilities of various boards and agencies for the protection of groundwater (1) environmental quality board: (2) pollution control agency: (3) department of agriculture: (4) board of water and soil resources: (5) department of natural resources: (6) department of health.

**Minnesota State Statute 103A.203 - Hydro-power** - Establishes policies of the state regarding production of hydroelectric or hydromechanical power

**Minnesota State Statute 97C.065 - Pollutants in waters** - Prohibits disposal of pollutants in state waters that are harmful to wildlife.

**Minnesota State Statute 103F.751 - Nonpoint source pollution control plan** - Authorizes the agency to develop a state plan for the control of nonpoint source water pollution to meet the requirements of the Federal Clean Water Act; and to work with other agencies to accomplish the purposes and objectives of the state nonpoint source pollution control plan; and evaluate the effectiveness of programs in achieving water quality goals and recommend to the legislature, any necessary amendments.

**Minnesota State Statute 86B.205 - Water surface use ordinance** - Authorizes commissioner to develop and publish guidelines to assist counties opting water surface use ordinances for waters within their jurisdiction.

**Minnesota State Statute 103F.201 - Shoreland protection** - Authorizes the commissioner to develop rules guiding use of shorelands.

**Minnesota State Statute 84.975 - Shoreland management grants** - Authorizes the commissioner to make grants to local governments to administer, monitor, and enforce state approved shoreland management ordinances.

**Minnesota State Statute 103G.705 – Stream protection and improvement loan program** - A political subdivision may apply to the commissioner on forms provided by the commissioner for a loan for up to 90 percent of the total local cost of a project to protect or improve a stream.

**Minnesota State Statute 103F.441 - Erosion control plan for development activities** - A person engaged in a development activity that will disturb over one acre of land must submit a sedimentation control plan and time schedule that will prevent excessive soil loss to the local government having jurisdiction over the land before the development activity is to begin.

**Minnesota State Statute 103F.403 - Soil loss ordinances** - Encourages units of local government to adopt a soil loss ordinance, using Federal guide to determine the soil loss limits, attainable by the best practicable soil conservation practice.

**Minnesota State Statute 103A.206 - Soil and water conservation policy** - Establishes policy of the state to conserve soil and water resources through the implementation of practices that effectively reduce or prevent erosion, sedimentation, siltation and agriculturally related pollution.

**Minnesota State Statute 103F.515 – Conservation reserve program** - Authorizes board to establish a conservation reserve program; selection of land for the conservation reserve program must be based on its potential for fish and wildlife production, reducing erosion, and protecting water quality.

**Minnesota State Statute 103A.401 - Statewide water information system** - Authorizes the commissioner to cooperate with other state agencies including the Minnesota geologic survey, to establish and maintain a statewide water information system to gather, process, and distribute information on the availability, distribution, quality, and use of waters of the state.

**Minnesota State Statute 103B.151 - State Water Planning** - Authorizes the environmental quality board to develop comprehensive long-range water resources planning and serve as the governor's representative on interstate water resources organizations.

**Minnesota State Statute 84.941 - Fish and game Policy** - It is the policy of the state that fish and wildlife are renewable natural resources to be conserved and enhanced through planned scientific management, protection, and utilization.

**Minnesota State Statute 97A.045 - Fish and game authority** - Authorizes commissioner to preserve, protect, and propagate desirable species of wild animals.

**Minnesota State Statute 84.944 - Acquisition of critical natural habitat** - Establishes policy for acquisition or improvement of critical natural habitat.

**Minnesota State Statute 84.95 - Reinvest in Minnesota resources fund** - A reinvest in Minnesota resources fund is created as a separate fund in the state treasury for costs of the acquisition and betterment of public land and easements in land and improvements in land for which the proceeds are appropriated.

**Minnesota State Statute 97A.101 - Public water reserves** - Authorizes the commissioner to designate and reserve public waters of the state to propagate and protect wild animals.

**Minnesota State Statute 97A.095 - Waterfowl protected areas** - Authorizes commissioner to designate migratory waterfowl refuge, and sets policy on access.

**Minnesota State Statute 97C.005 - Special management waters** - Authorizes commissioner to classify waters for primary use as trophy lakes, family fishing lakes, designated trout lakes, designated trout streams, special species management lakes, and other designated uses.

**Minnesota State Statute 97C.001 - Experimental waters** - Experimental waters are lakes and streams where special regulations are used and evaluated to meet a specific fisheries objective.

**Minnesota State Statute 84.091 - Aquatic vegetation in public waters** - The state is the owner of wild rice and other aquatic vegetation growing in public waters. A person may not acquire a property interest in wild rice or other aquatic vegetation or destroy wild rice or aquatic vegetation, except as authorized under this chapter.

**Minnesota State Statute 84D.02 - Harmful exotic species management program** - Authorizes commissioner to establish a statewide program to prevent and curb the spread of harmful exotic species.

**Minnesota State Statute 84D.03 - Infested waters; restricted activities** - Authorizes commissioner to designate a water of the state as an infested water if the commissioner determines that the water contains a harmful exotic species that could spread to other waters if use of the water and related activities are not regulated to prevent this.

**Minnesota State Statute 84D.04 - Classification of exotic species** - Authorizes commissioner to classify exotic species according to the following categories: (1) prohibited (2) regulated; (3) unlisted (4) unregulated.

**Minnesota State Statute 103E.021 - Ditches must be planted with permanent grass** - In any proceeding to establish, construct, improve, or do any work affecting a public drainage system under any law that appoints viewers to assess benefits and damages, the authority having jurisdiction over the proceeding shall order spoil banks to be spread consistent with the plan and function of the drainage system.

**Minnesota State Statute 103A.202 - Wetland policy** - Establishes state policy to preserve the wetlands of the state to conserve surface waters, maintain and improve water quality, preserve wildlife habitat, reduce runoff, provide for floodwater retention, reduce stream sedimentation, contribute to improved subsurface moisture, enhance the natural beauty of the landscape, and promote comprehensive and total water management planning.

**Minnesota State Statute 103G.127 - Permit program under section 404 of the Federal Clean Water Act** - Authorizes the commissioner, with the concurrence of the board of water and soil resources and the commissioner of agriculture, to adopt rules establishing a permit program for regulating the discharge of dredged and fill material into the waters of the state as necessary to obtain approval from the United States Environmental Protection Agency to administer the permit program under section 404 of the Federal Clean Water Act.

**Minnesota State Statute 103F.601 - Water Bank Program** - Authorizes commissioner to program of acquiring interests in land to preserve wetlands.

**Minnesota State Statute 103F.516 - Permanent wetlands preserve** - Authorizes board to acquire permanent easements from willing landowners on land containing certain wetlands.

**Minnesota State Statute 97A.145 - Wetlands for wildlife** -Authorizes commissioner to acquire wetlands and bordering areas, including marshes, ponds, small lakes, and stream bottoms for water conservation relating to wildlife development.

**Minnesota State Statute 103G.2243 – Local wetland plans** - Authorizes local units of government to develop and implement comprehensive wetland protection and management plan

**Minnesota State Statute 84.035 - Peatland protection** - Authorizes commissioner to protect and preserve these patterned peatlands as a peatland management system through establishment and designation of certain peatland core areas as scientific and natural areas.

**Minnesota State Statute 89A.02 - Forestry Policy** - Establishes policy to guide the sustainable management, use, and protection of the state's forest resources to achieve the state's economic, environmental, and social goals.

**Minnesota State Statute 89A.05 - Timber harvesting and forest management guidelines** - Establishes Forest Resources Council to coordinate the development of comprehensive timber harvesting and forest management guidelines and authorizes commissioner to monitor riparian forests.

**Minnesota State Statute 103B.231 - Local Water Planning** - Authorizes local units of government to develop local watershed management plans

**Minnesota State Statute 85.32 - Canoe and boating routes** - Authorizes commissioner to mark canoe and boating routes on certain rivers, including Red Lake, and provide amenities on these rivers.



Minnesota State Statute 103A.208 - Scenic river protection policy - Establishes a wild and scenic rivers program

## **Provincial – Manitoba**

**The Water Resource Administration Act-** The Water Resource Administration Act establishes the Lieutenant Governor in Council's authority to designate any water control work, natural water channel or lake as a provincial waterway. The Minister is authorized to manage and administer all those matters that relate to the construction or operation of water control works and matter dealt with under The Diking Authority Act, The Ground Water and Water Well Act, The Water Power Act, and The Water Rights Act. This Act also sets out prohibitions of use within designated flood areas. Within designated flood areas, it makes the requirement for a permit to be issued that authorizes the occupation and construction of building, and states that the permit can contain terms and conditions that are consistent with existing and the new proposed "Designated Flood Area Regulation".

**The Water Rights Act-** All property in an all right to the use or diversion of all surface and ground water is vested in the Crown in the right of Manitoba. the use or diversion of water; or construction, establishment or maintenance of works requires a license issued under The Water Rights Act. Water is allocated on a "first in time, first in right" principle. Priorities of purpose have been established to address situations with identical submission dates. The highest priority is domestic use followed by municipal, agricultural, industrial, irrigation and other purposes.

Diversions include drainage of agricultural land and flood control works. The Act also provides for a reservation to be placed on unlicensed water and for agreements or arrangements to be entered into regarding interprovincial boundary waters.

**The Water Power Act-** Jurisdiction over water power and any lands required for its creation, development or protection is addressed in The Water Power Act. Ministerial approval is required to divert, use, or store water for power purposes and for activities that impact water within a water power reserve.

**The Ground Water and Water Well Act-** Licensing of all person engaged in the business of drilling water wells is provided for under The Ground Water and Water Well Act. The Act provides the legal right to limit flow from wells to protect the aquifer. Specifications, standards and safety procedures for wells and well drilling are prescribed in the regulation.

**The Diking Authority Act-** The Diking Authority Act gives the City of Winnipeg authority and control over dikes and pumping stations constructed for the protection of property during periods of flood in the Red River, Assiniboine River or Seine River. Supervision of administration of the Act is provided by The Diking Commissioner who is a member of The Water Resource Branch.

**The Water Commission Act-** This Act establishes five member commission to study projects, problems and schemes referred by the Minister. The commission prepares a report and makes recommendations designed to secure the maximum benefits from the use, allocation and conservation of water. In 1997, the Manitoba Water Commission conducted an independent review of actions taken during the 1997 Red River flood for the Minister of Natural Resources.

**The Water Supply Commission Act-** Establishment of a water commission area, known as a water district, and a water commission for each district, is provided for in The Water Supply

Commission Act. The Commission is responsible for preparing schemes for supply the water commission area with an adequate and reliable permanent supply of water relative to the control and use of the water resources available. Currently there is the Souris River Water Commission and the Lower Red River Valley Water Commission. Both act in an advisory capacity only.

**The Endangered Species Act-** This Act ensures the protection and enhances the survival of endangered and threatened species and their habitat. The Act prevents the destruction, disturbance or interference of their habitat and the damage, disturbance, obstruction or removal of a natural resource on which an endangered or threatened species depends on for its life and propagation.

**The Wildlife Act-** This Act authorizes the Province of Manitoba to: designate special areas for the better management, conservation and enhancement of the wildlife resources; simulate what constitutes an offence, and determine licensing, permit and enforcement provisions. Authorization is required, in the form of a license or permit, to destroy or damage habitat on Crown lands or to willfully destroy the nest or eggs of any game bird or bird listed in the schedule.

**The Manitoba Habitat Heritage Act-** Establishment of The Manitoba Habitat Heritage Corporation is provided for The Manitoba Habitat Heritage Act. The Corporation is responsible for conservation, restoration and enhancement of fish and wildlife habitat and populations on Crown land and private land by agreement with the owner.

**The Crown Lands Act-** Crown lands are managed and administered under The Crown Lands Act. The Act provides for the sale, lease, permitting, licensing, enforcement and reservations for specific departmental and government programs. Out of every disposition of Crown land there is reserved to the Crown, in the case the land extends to the shores of any navigable water or an inlet thereof or to the boundary line between Canada and the United States, a strip of land one and one-half chains in width measured from ordinary high mark or from the boundary line. Agricultural disposition of Crown lands is administered by The Department of Agriculture.

**The Provincial Parks Act-** This Act provides the authority to establish lands as provincial parks. In accordance with parks classifications and land use categories, the purpose may be to conserve ecosystems and maintain biodiversity. Regulations have been developed respecting the protection and use of water, interference with drainage patterns and pollution of water.

**The Sustainable Development Act-** Sustainable development will be implemented in the provincial public sector and promoted in the private industry and in society through the framework created in The Sustainable Development Act. The government will address sustainable development through development of new legislation, revision of existing legislation and development or reporting requirements for department, Crown agencies and provincial public sector organizations. The framework created in the Act provides for a; Manitoba Round Table for Sustainable Development, Sustainable Development Coordination Unit, Sustainable Development Strategy, Code of Practice and Sustainable development Innovation Fund.

**The Environment Act-** The intent of The Environment Act is to provide for: environmental assessment of projects which are likely to have significant effects on the environment; development and implementation of standards and objectives for environmental quality; and development of environmental management strategies and policies for the protection,

maintenance, enhancement and restoration of environmental quality. There are three classes of environmental assessments, dependent on the size of the project, each with their own set of licensing criteria.

**The Dangerous Goods Handling and Transportation Act-** This Act establishes controls over all aspects of dangerous goods affecting the environment and/or public health with an emphasis on standards for handling, disposal of hazardous wastes, environmental accident response and highway transportation.

**The Manitoba Water Services Board Act-** This Act provides for the establishment of the Manitoba Water Services Board. The Board's objective is to provide for the development and maintenance of water and sewage treatment facilities and the related infrastructure in agricultural and rural areas. Services are delivered through municipalities or water districts.

**The Conservation Districts Act-** The purpose of The Conservation Districts Act is to provide for the conservation, control and prudent use of resources through the establishment of conservation districts and to protect the correlative rights of owners. A municipality or group of municipalities may form a Conservation District. Each management plan developed by the Conservation District Board must comply with The Water Rights Act, The Land Rehabilitation Act and The Planning Act. Programs may address soil conservation, water management and storage, and land drainage.

**The Municipal Act-** This Act provides for the formation of a municipality, its council and the jurisdiction under which it governs. With respect to water, a municipality may pass by-laws regarding drains and drainage on private or public property.

**The Planning Act-** This Act provides for the development of Provincial Land Use Policies, establishment of special planning areas and planning districts and provides for the development of basic planning statements, development plans and zoning by-laws. Special planning areas are designated for the protection and conservation of natural resources such as lakes, rivers and shore lands.

**The Department of Agriculture Act-** This Act allows the Department of agriculture to institute and carry out programs, projects and undertaking relating to any aspect of Agriculture or of rural communities. The Department of Agriculture and Natural Resources cooperate in matters of land drainage, irrigation and rural water supplies.

**The Highways and Transportation Department Act-** This allows the Department of Highways and Transportation, with consent of the Minister of Agriculture, to construct, maintain and acquire land for the purpose of drains draining water from departmental roads.

**The Heritage Resource Act-** Under The Heritage Resource Act sites considered of heritage significance may be designated either as a provincial or municipal heritage site and provided protection through the issuance of a heritage permit or a municipal permit respectively. Within a heritage site, before commencing proposed works, activity, development or project, an application must be submitted for heritage permit. The proponent may be required to submit a heritage resource impact assessment and/or development plan.

**The Public Health Act-** The development of regulations and orders respecting; sewer treatment systems; construction, maintenance and purification of water systems and supplies; and preventing pollution of wells, underground waters; and springs, is provided for in The Public Health Act.

**The City of Winnipeg Act-** The City of Winnipeg Act stipulates the power and authority under which the City of Winnipeg is governed. With regards to water related issues, the city has full authority concerning protection against floods, construction and maintenance of drains and watercourses and pollution thereof.